



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 11271284

Date: OCT. 14, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a track and field athlete, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish, as required, that he met at least three of the initial evidentiary criteria for this classification. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we conclude that the Petitioner has met this burden. Accordingly, we will sustain the appeal.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation

at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner is a track and field athlete who competes in men's [REDACTED] events. At the time of filing, he was training at [REDACTED] Track Club – [REDACTED] [REDACTED] as a member of its International Elite Program.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the ten alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner claimed to meet four criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the alien in professional or major media; and
- (viii), Leading or critical role for distinguished organizations or establishments.

The Director concluded that the Petitioner met the criteria relating to prizes and published materials. *See* 8 C.F.R. § 204.5(h)(3)(i) and (iii). The record supports the Director's conclusion that he satisfied these criteria. For example, the Petitioner provided evidence that he won the gold medal in the [REDACTED] [REDACTED] event at the 2017 [REDACTED] Championships and demonstrated that he has received widespread national media coverage for his athletic achievements in his home country of [REDACTED].

The Director determined that the Petitioner did not satisfy the criteria relating to memberships in associations that require outstanding achievements, and performance in leading or critical roles for organizations that have a distinguished reputation. *See* 8 C.F.R. § 204.5(h)(ii) and (viii). We disagree with the Director's determination regarding the membership criterion. The Director rejected the Petitioner's initial claim that he meets this criterion based on his membership on [REDACTED]'s 2012 and 2016 Olympic teams without considering the probative value of evidence submitted in support of these claims, noting that "a team is not an association." A given petitioner's membership on a national, or

even an Olympic team, will not necessarily or automatically satisfy the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii). However, the Director should not have summarily rejected the Petitioner's claim that his specific team memberships qualified him under the membership criterion.

Upon *de novo* review of the Petitioner's evidence submitted in support of this criterion, we conclude that the Petitioner has established that his membership on [redacted]'s Olympic teams required him to attain outstanding achievements by meeting world-class standards as determined and judged by the international experts at the International Association of Athletics Federation (IAAF), now known as World Athletics, the international federation of track and field, and approved by the International Olympic Committee. Therefore, the Petitioner has established that he meets the membership criterion.

Accordingly, the record supports the Petitioner's claim that he has satisfied at least three of the ten regulatory criteria.

B. Final Merits Determination

As the record satisfies at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), we will analyze the Petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. We evaluate whether he has demonstrated, by a preponderance of the evidence, that he has sustained national or international acclaim and that his achievements have been recognized in the field through extensive documentation, making him one of the small percentage who have risen to the very top of the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. In the present matter, the Petitioner has demonstrated his eligibility for this classification.

The record reflects that the Petitioner has represented his native country of [redacted] in the men's [redacted] event at the 2012 London Olympics and 2016 Rio Olympics, and was selected for the honor of serving as [redacted]'s flag bearer at the opening ceremonies of both events. He has also consistently achieved the world-class times required to qualify for the biennial IAAF World Championships in 2013, 2015, and 2017, where he has competed in both the [redacted] events. The Petitioner was the gold medalist in the [redacted] at the 2017 [redacted] Championships, the [redacted] athlete to ever win a medal at the event, and he achieved a 6th place finish at the 2015 [redacted] Games. He has received a total of ten gold, silver, and bronze medals in international competition. As a result of his performances, he was ranked [redacted] in the IAAF's world rankings in early 2019, which placed him among the top [redacted] of elite athletes competing in the men's [redacted] globally.

Additionally, the record includes evidence that the Petitioner is currently [redacted]'s national record holder in the men's [redacted], and was also part of the [redacted] team that holds the [redacted] record in the men's [redacted]. He has been selected by the [redacted] the national federation in his sport, as the senior male athlete of the year for several years, and his athletic accomplishments have been covered extensively in [redacted]'s national media publications. A 2018 *Pan American World* article includes the Petitioner on its list of the [redacted] athletes in history, recognizing him as "[redacted] This evidence sets the

Petitioner apart through a “career of acclaimed work in the field.” *See* H. Rep. No. 101-723, at 59 (Sept. 19, 1990).

Based on his accomplishments, the Petitioner was recruited as a member of the [redacted] International Elite Program in [redacted] Athletes in this USA Track and Field-associated elite club program receive corporate sponsorships and other benefits, and membership is limited to those top athletes who have qualified for U.S. national championships, U.S. Olympic trials, World Championships, and the Olympic Games.

In summary, the Petitioner has demonstrated his extraordinary ability as a competitive track and field athlete. The totality of the evidence establishes that he possesses a level of expertise that is consistent with a finding that he is one of a small percentage at the very top of the field of endeavor and that he has documented sustained national acclaim. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *Kazarian*, 596 F.3d at 1119-20. *See also Matter of Price*, 20 I&N Dec. 953, 956 (Assoc. Comm’r 1994).

III. CONCLUSION

The Petitioner has established that he meets at least three of the evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). He has also demonstrated sustained acclaim and that his achievements have been recognized through extensive documentation. Lastly, the Petitioner has shown that he intends to continue working in his area of expertise and that he will substantially benefit prospectively the United States. He therefore qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is sustained.